

# **WEST MANATEE FIRE AND RESCUE DISTRICT**

## **RESOLUTION 2021-08**

### **Fire Prevention Code Board of Appeals**

**A RESOLUTION OF THE WEST MANATEE FIRE AND RESCUE DISTRICT OF MANATEE COUNTY, FLORIDA; ADOPTING THE REVISED RULES OF THE FIRE PREVENTION CODE BOARD OF APPEALS; ACKNOWLEDGING THE WEST MANATEE FIRE AND RESCUE DISTRICT'S DUTIES AND RESPONSIBILITIES RELATED TO THE FIRE PREVENTION CODE BOARD OF APPEALS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on January 28, 2016, at a meeting of the Manatee County Fire Chiefs' Association, a Fire Prevention Code Board of Appeals was established for the purpose of resolving matters, which are unable to be resolved at the Fire District-level, related to that particular Fire District's Fire Code; and

**WHEREAS**, at the January 28, 2016, meeting the Manatee County Fire Chiefs' Association also approved Rules of the Fire Prevention Code Board of Appeals, and

**WHEREAS**, at their July 22, 2021 meeting, the Manatee County Fire Chiefs' Association, approved revisions to the Rules of the Fire Prevention Code Board of Appeals, a copy of which is attached hereto as Exhibit 1; and

**WHEREAS**, the Rules of the Fire Prevention Code Board of Appeals set forth specific duties and responsibilities for the Fire District involved in a particular matter upon the matter being filed with the Fire Prevention Code Board of Appeals; and

**WHEREAS**, the Board of Fire Commissioners for the West Manatee Fire and Rescue District on September 7, 2021, held a public meeting as required by Florida Statute 200.065; and

**WHEREAS**, the Board of Fire Commissioners of the West Manatee Fire and Rescue District of Manatee County, Florida, has determined that it is in the best interest of the Fire District and its constituents to have those matters related to its Fire Code that are unable to be resolved at the Fire District-level to be able to be heard by the Fire Prevention Code Board of Appeals in accordance with the Rules of the Fire Prevention Code Board of Appeals;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Fire Commissioners of West Manatee Fire and Rescue District, Manatee County, Florida, that:

1. The above stated recitals and attached exhibit are true and correct and are hereby fully incorporated herein.

2. The revised Rules of the Fire Prevention Code Board of Appeals, attached hereto as Exhibit 1, are hereby adopted by the West Manatee Fire and Rescue District.
3. The duties and responsibilities of the West Manatee Fire and Rescue District, relating to cases involving the District's Fire Code, as set forth in the Rules of the Fire Prevention Code Board of Appeals, are also hereby acknowledged.
4. This Resolution shall take effect immediately upon its adoption.

Passed and duly adopted with a quorum present and voting this 7<sup>th</sup> day of September, 2021.

Chair

Commissioner

Commissioner

Commissioner

Attested by: \_\_\_\_\_, Secretary



# RULES OF THE FIRE PREVENTION CODE BOARD OF APPEALS

## **1.1 Definitions.**

"Association" shall mean the Manatee County Fire Chiefs' Association.

"Board of Appeals" shall mean the Fire Prevention Code Board of Appeals.

"Code" shall mean the "Fire Prevention Code" adopted by a particular District in accordance with Sections 633.202 and 633.208, Florida Statutes, as may be amended, the "Florida Fire Prevention Code" adopted by the State Fire Marshal pursuant to Chapter 69A-60, Florida Administrative Code, as may be amended, including the Florida editions of NFPA 1 Fire Code and NFPA 101 Life Safety Code.

"District" shall mean the Sarasota Manatee Airport Authority or any one of the dependent or independent special fire districts located in Manatee County, Florida, who has adopted these Rules of the Fire Prevention Code Board of Appeals.

"Rules" shall mean these Rules of the Fire Prevention Code Board of Appeals.

## **1.2 Applicability.**

The provisions of these Rules shall be in full force and effect in Manatee County within the jurisdiction of any District who has formally adopted these Rules by resolution of that District's Board of Commissioners.

## **1.3 Establishment of Fire Prevention Code Board of Appeals.**

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A Fire Prevention Code Board of Appeals, hereinafter referred to as the "Board of Appeals," shall be established to rule on matters relating to the Code.

1.3.1 General. Whenever it is claimed that the provisions of the Code do not apply or have been misapplied by a District, or when it is claimed that the true intent and meaning of the Code or any of the regulations thereunder have been misconstrued or misapplied by a District, or when it is claimed that a decision of a District is unreasonable or arbitrary, the affected owner or owner's duly authorized agent may appeal the decision of the District to the Board of Appeals. Through the assistance of the Association, the Board of Appeals is intended to serve as an independent and impartial appellate remedy to such claims against a District.

1.3.2 Membership.

1.3.2.1 Subject to the Association receiving appropriate authorization from each District, the Association shall appoint the members of the Board of Appeals. Final appointment of the members of the Board of Appeals is subject to ratification by each District.

1.3.2.2 The Board of Appeals shall consist of seven (7) principal members who are qualified by their training, education, knowledge, and experience to vary the application of the provisions of the Code and act on related matters, and to perform such other duties as established herein. The Board of Appeals shall have one (1) ex officio member, who is the chair or vice

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chair of the Manatee County Fire Marshal's Committee of the Association. The ex officio member shall assist the principal members with navigating the Code and is entitled to participate in all discussions, but may not vote, serve as a witness, or serve as the Chair or Vice Chair of the Board of Appeals. Effective October 1, 2023, the Board of Appeals shall be reduced to five (5) principal members composed from 1.3.2.6, and have one ex officio member.

1.3.2.3 Each principal member shall be permitted to have an alternate with similar experience to serve in his or her stead when necessary. Alternate members shall also be appointed by the Association and are subject to the ratification by each District.

1.3.2.4 All principal and alternate members of the Board of Appeals must reside within Manatee County at the time of appointment and while serving on the Board of Appeals and shall be qualified electors of Manatee County. Principal and alternate members of the Board of Appeals shall not be employees, agents, or officers of any District.

1.3.2.5 Members of the Board of Appeals shall be governed by the applicable provisions of the State of Florida's Ethics Code. Members of the Board of Appeals shall also comply with the applicable requirements of the Florida "Government in the Sunshine" and "Public Records" laws.

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1.3.2.6 Composition of Board. The composition of the Board of Appeals shall be chosen from the following:

- a. One (1) certified general contractor.
- b. One (1) certified fire protection contractor.
- c. One (1) registered professional engineer or architect.
- d. One (1) individual experienced in the field of fire department operations or fire code enforcement.
- e. One (1) individual experienced in the field of building code enforcement.
- f. One (1) licensed attorney.
- g. One (1) member of the general public.

Where a member is required to be "registered," "licensed," or "certified," said registration, license, or certification shall be issued by the State of Florida unless otherwise specified.

1.3.2.7 Term. Principal and any alternate members of the Board of Appeals shall be appointed to an initial three (3)-year term. Successive terms for members of the Board of Appeals will be at the discretion of the Association. Any vacancy occurring during a term shall be filled for the unexpired portion of the term. The member's terms shall begin on October 1 and end on September 30.

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1.3.2.8 Removal/Absences. Members of the Board of Appeals shall be removed from office by the Association for failure to attend three (3) successive meetings or when a member's absences exceed twenty-five (25) percent of all scheduled meetings during the member's term, if the absence is not approved by the Board of Appeals for cause. Any member who fails to attend a meeting during at least seventy-five (75) percent of the time the meeting is in session shall be considered not to have attended the meeting.

1.3.3 Administrative Duties. The Association shall be responsible for overseeing the general administrative duties and responsibilities pertaining to the Board of Appeals and all related costs. The Association shall appoint someone to serve as the Clerk of the Board of Appeals who will be responsible for the administrative duties of the Board of Appeals, including but not limited to coordinating scheduling of meetings, attending/recording the meetings, advertising of the Board of Appeals' meetings and serving as the Board of Appeal's records custodian. Any appeal fee received by the Association, as provided for under Section 1.4.6, shall be used to offset costs associated with the administrative duties and responsibilities of the Board of Appeals, including, but not limited to, legal fees for the Board of Appeals' legal counsel. Administrative duties and responsibilities pertaining to a particular appeal shall be the responsibility of the District involved. In addition, administrative costs associated with individual appeals shall be borne by the District involved in the subject

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appeal. Should administrative costs of the Board of Appeals for any individual appeal exceed the appeal fee, the District involved in the appeal shall pay those excess costs.

1.3.4 Rules and Procedures of the Board of Appeals. The Board of Appeals shall have the authority to establish rules and regulations for conducting its business.

1.3.4.1 Vote. Each member of the Board of Appeals shall have one (1) full vote, regardless of whether a member is currently serving as Chair or Vice Chair

1.3.4.2 Quorum. A quorum for the Board of Appeals shall be not less than five (5) voting members of the Board of Appeals. After October 1, 2023, a quorum for the Board of Appeals shall be not less than three (3) voting members of the Board of Appeals.

1.3.4.3 Officers. The Board of Appeals shall select one of its members to serve as Chair and one member to serve as Vice-Chair. Chair, or in his/her absence, Vice Chair shall preside over the Board of Appeals meetings. The presiding officer shall preserve strict order and decorum at all meetings.

1.3.4.4 Meetings. The Board of Appeals shall meet at least annually to conduct its Annual Meeting. Additional meetings of the Board of Appeals may be scheduled at the Annual Meeting, at such other times as the Board of Appeals determines, or when



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otherwise necessitated due to the filing of an appeal where a special meeting has been requested by one of the parties. Other than the Annual Meeting, any meeting of the Board of Appeals may be cancelled by the Chair when there are no pending appeals to be heard by the Board of Appeals.

1.3.4.4.1 Public Notice of all Board of Appeals meetings shall be reasonably provided, but not less than ten (10) days prior to the meeting. All Board of Appeals meetings shall be open to the public and shall comply with the applicable requirements of the Florida "Government in the Sunshine" and "Public Records" laws. Minutes shall be taken at each meeting of the Board of Appeals. For meetings concerning appeals, the District that is subject to the appeal shall provide a clerk to take minutes, properly notice and advertise the special meeting and hearing, and provide those records to the Clerk of the Board of Appeals. For all other meetings of the Board of Appeals, the Clerk of the Board of Appeals shall take minutes and properly notice and advertise the meetings. The Board of Appeals shall keep records of its examinations and other official actions. Minutes and records of the Board of Appeals shall be public records. Records associated with individual appeals shall be maintained by the District involved with the subject appeal. All minutes and records

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of the Board of Appeals shall be maintained by the Clerk of the Board of Appeals.

1.3.4.4.2 All Board of Appeals meetings shall be governed by Robert's Rules of Order.

1.3.4.4.3 In the interest of convenience for the parties, all Board of Appeals meetings due to the filing of an appeal shall be held at the District's administrative office for the District that is the subject of the appeal. All other Board of Appeal meetings shall be held at a designated District's administrative office.

1.3.4.4.4 The Board of Appeals may hire legal counsel to provide advice and direction to the Board of Appeals. Legal counsel services include, but are not limited to, advising the Board of Appeals on the scope of the Board of Appeals' duties, compliance with these Rules and applicable law, providing guidance during meetings of the Board of Appeals and assisting in the drafting of any written determination and preparation of notices. The Association will be responsible for the payment of the legal fees of the Board of Appeals' legal counsel. COPIES OF ALL FILINGS IDENTIFIED IN THESE RULES MUST BE PROVIDED TO THE BOARD OF APPEALS' LEGAL COUNSEL.

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### **1.4 Appellate Authority of the Fire Prevention Code Board of Appeals.**

1.4.1 The Board of Appeals shall provide for the reasonable interpretation of the provisions of the Code and issue rulings on appeals of the decisions of the District, only after having heard evidence and argument from the parties at a public hearing, as provided for in 1.3.4.4.

1.4.2 The rulings of the Board of Appeals shall be consistent with the letter of the Code or, when involving issues of clarity, ensuring that the intent of the Code is met with due consideration for public safety and fire fighter safety.

1.4.3 The Board of Appeals shall have the authority to grant alternatives or modifications through procedures outlined in Section 1.4.12.

1.4.4 The Board of Appeals shall not have the authority to waive the requirements of the Code.

1.4.5 The Board of Appeals decisions shall not be precedent setting.

1.4.6 Procedures on Appeal.

1.4.6.1 Any person or entity with standing shall be permitted to appeal a decision of the District when it is claimed that any one or more of the following conditions exist:

- (1) The true intent of the Code has been incorrectly interpreted.
- (2) The provisions of the Code do not fully apply.

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- (3) A decision of the District is unreasonable or arbitrary as it applies to alternatives or new materials.

1.4.6.2 A written notice of appeal with the non-refundable appeal fee shall be submitted to the District having jurisdiction within thirty (30) calendar days of notification of a decision by the District. Upon receipt of the notice of appeal with non-refundable appeal fee, the District shall forward a copy of the notice of appeal to the Clerk of the Board of Appeals and the non-refundable appeal fee to the Association. Failure to provide a written notice of appeal with non-refundable appeal fee within thirty (30) calendar days of notification of a decision by a District will be a waiver of the right to appeal.

1.4.6.2.1 The notice of appeal shall outline all of the following:

- (1) The Code provisions from which relief is sought.
- (2) A statement indicating which provisions of Section 1.4.6.1 apply.
- (3) Justification as to the applicability of the provisions cited in Section 1.4.6.1.
- (4) A requested remedy.
- (5) Justification for the requested remedy stating specifically how the Code is complied with, public safety is secured, and fire fighter safety is secured.

1.4.6.2.2. For an appeal to be accepted and proceed, the non-refundable appeal fee of \$2,500 must accompany the written notice of appeal. If the appeal fee is not included with the notice

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of appeal, the appeal will not proceed and will be rejected as incomplete. The appeal fee shall be payable to the Association and include a note that it is the Board of Appeals appeal fee.

1.4.6.3 Documentation supporting an appeal shall be submitted by the appellant to the District no later than seven (7) calendar days after the date of filing the notice of appeal. No later than seven (7) calendar days after the filing of the documentation supporting the appeal, the District shall forward all documentation supporting the District's position to the appellant. Simultaneously and no later than at least seven (7) calendar days prior to the hearing, the District shall submit all documentation submitted by the appellant and District to the Clerk of the Board of Appeals. The appeal hearing will occur at a Board of Appeals' special meeting to be scheduled to occur within thirty (30) calendar days after the date of filing the notice of appeal, unless otherwise agreed to by the parties.

1.4.7 Hearing. Upon receipt of the written notice of appeal, non-refundable appeal fee, and supporting documentation by the District, a special meeting of the Board of Appeals will be scheduled for the appeal hearing, with notice to the appellant, the District, the Board of Appeals' legal counsel, Clerk of the Board of Appeals, and the members of the Board of Appeals. Both the appellant and the District, and/or their representatives, shall attend the hearing and may present evidence at the hearing. The Board of Appeals shall consider each appeal on its own merits and shall base its decision only on the evidence presented at the appeal hearing.

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### 1.4.7.1 Procedure for Each Public Hearing.

1.4.7.1.1 Presiding Officer or Board of Appeals' legal counsel shall provide an explanation of hearing process.

1.4.7.1.2 Oath of Affirmation – Each person who intends to address the Board of Appeals shall declare, pursuant to oath or affirmation administered by the Chair or another duly authorized person, that the factual statements or representations that he or she will present shall be truthful and accurate. Any person who knowingly makes a false statement or representation under oath or affirmation shall be subject to criminal and other sanctions as provided by law.

1.4.7.1.3 Disclosure/Ex-parte Communications. Board of Appeals members shall disclose into the record factual matters which are not already contained in the record, when such Board members have personal knowledge pertaining to the communications relevant to the matter being heard.

1.4.7.1.4 Appellant presentation – 20 minutes however, more time may be given by the presiding officer to ensure all relevant testimony is presented. Witnesses may be cross examined by Board of Appeals' members, Board of Appeals' legal counsel, and District staff and counsel.

1.4.7.1.5 District presentation – 20 minutes however, more time may be given by the presiding officer to ensure all relevant testimony is presented. District staff shall summarize its

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findings and conclusions so as to provide an overview of the proposed matter and identify issues for the Board of Appeals consideration. Witnesses may be cross examined by Board of Appeals' members, Board of Appeals' legal counsel, Appellant and Appellant's counsel.

1.4.7.1.6 Public Comment on Agenda Item – Each person choosing to speak is limited to 3 minutes and should identify whether or not he/she has been sworn. If there are a group of 5 or more people wishing to speak on the same matter, they may combine their time and have one speaker speak for 10 minutes. Testimony presented shall be competent and substantial in nature.

1.4.7.1.7 Rebuttal by Appellant – 10 minutes. Rebuttal must only address comments made in the previous presentations.

1.4.7.1.8 Board of Appeals additional questions.

1.4.7.1.9 Close public hearing.

1.4.7.1.10 Board of Appeals Action – All decisions shall be based on the evidence presented at the hearing on the appeal, which shall include the testimony and other evidence presented. Strict rules of evidence shall not apply but the evidence must be relevant to the issues before the Board of Appeals.

1.4.7.2 Conflict. No member of the Board of Appeals shall sit in judgment on any appeal in which the member holds a direct or indirect property or financial interest in the appeal.

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1.4.7.3 Board of Appeals Decisions. The Board of Appeals may, upon an affirmative vote of a majority of the votes present, affirm the decision of the District. If the Board of Appeals decision varies the application of the Fire Prevention Code or modifies the order of the District, then two-thirds (2/3) vote of the quorum shall be required. The Board of Appeals' decision, with the reasons therefore and justification linked to specific sections of the Code, shall be transcribed in writing and a copy shall be mailed, by certified mail, to the appellant and the District, within fourteen (14) calendar days after the hearing. A copy of the Board of Appeals' decision shall be posted in the District's office that was the subject of the appeal, for two weeks after the decision was mailed to the appellant.

1.4.7.3.1 The Board of Appeals shall provide for reasonable interpretation of the provisions of the Code and rule on appeals from decisions of the District.

1.4.7.3.2 The Board of Appeals shall, in every appeal, reach a decision without unreasonable or unnecessary delay. If a decision of the Board of Appeals reverses or modifies a refusal, order, or disallowance of the District, the District shall immediately take action in accordance with such decision.

1.4.7.3.3 Every decision of the Board of Appeals shall be entered in the minutes of the Board of Appeals meeting.



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1.4.7.3.4 Every decision of the Board of Appeals shall be promptly filed with the District and shall be open for public inspection.

1.4.7.3.5 All decisions of the Board of Appeals shall be final, subject to judicial review as provided by law.

1.4.7.3.6 Fire Marshal Order Stayed, Exception. Pending the disposition of an appeal scheduled for hearing, the order or decision of the District sought to be appealed shall be stayed unless the District certifies under oath, based upon available data and information, that an extreme danger to life or property exists, warranting immediate compliance under the Code. Said certification must be included in the order and be filed with the Board of Appeals within ten (10) calendar days after the notice of appeal is filed.

### 1.4.8 Conflict Resolution.

1.4.8.1 Any conflict between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code as applied to a specific project shall be resolved in accordance with Section 553.73(11), Florida Statutes.

1.4.8.2 The Board of Appeals is hereby designated and authorized to perform the local administrative board functions set forth in Section 553.73(11), Florida Statutes. In accordance with Section 553.73(11),

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Florida Statutes, the duties and functions of the Board of Appeals shall include the following:

- a. To hear and render decisions in appeals of conflict decisions made jointly by the District and the local building official, in accordance with Section 553.73(11), Florida Statutes.
- b. To resolve conflicts between the building code and the Code, in accordance with Section 553.73(11), Florida Statutes, in those instances where the District having jurisdiction and the local building official are unable to agree on a resolution of said conflict.

1.4.9 Additional Powers and Functions. The Board of Appeals is hereby authorized and empowered to hear and rule upon appeals from orders of the District in challenges brought pursuant to Section 633.208(3)(d), Florida Statutes, to amendments to the District's Code, and appeals from decisions of the District relating to false alarms.

1.4.10 Any decision of the Board shall be final and reviewable in the manner provided by Section 553.73(11), Florida Statutes.

1.4.11 Permits and Approvals.

1.4.11.1 Any permit or approval authorized to be issued by the District pursuant to the Code shall be subject to immediate suspension, revocation, or denial by the District upon the District's

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determination that conditions exist which make the permitted activity imminently dangerous to life or property. The District's order immediately suspending or revoking a permit shall cite with particularity the facts supporting the suspension or revocation. The suspension or revocation shall be effective immediately upon notice to the permittee at the location indicated on the permittee's application. Upon such immediate suspension or revocation of a permit, the permittee shall be entitled to appeal the decision of the District at a subsequent hearing of the Board of Appeals. Upon the Board of Appeal's receipt of a written notice requesting a special meeting for a hearing with respect to an immediate permit suspension or revocation, the Board of Appeals shall set such a hearing for a date no later than thirty (30) calendar days from the Board of Appeal's receipt of the written notice of appeal and non-refundable appeal fee unless the parties stipulate to a later date. The Board of Appeal's written decision shall be mailed by certified mail to the permittee within fourteen (14) calendar days after the hearing. In all other respects, the procedures of Section 1.4.6 and 1.4.7 shall apply.

### 1.4.12 Equivalencies, Alternatives, and Modifications.

1.4.12.1 Equivalencies. In recognition that it is not the intent of the Code to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by the Code, provided technical documentation is submitted to the District to demonstrate equivalency

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and the system, method, or device is approved for the intended purpose.

1.4.12.2 Alternatives. The specific requirements of the Code shall be permitted to be altered by the District to allow alternative methods that will secure equivalent fire safety, but in no case shall the alternative afford less fire safety than, in the judgment of the District, that which would be provided by compliance with the provisions contained in the Code.

1.4.12.3 Modifications. The District is authorized to modify any of the provisions of the Code upon application in writing by the owner, a lessee, or a duly authorized representative where there are practical difficulties in the way of carrying out the provisions of the Code, provided that the intent of the Code shall be complied with, public safety secured, and substantial justice done.

1.4.12.4 Buildings with equivalency, alternatives, or modifications approved by the District shall be considered as conforming to the Code.

1.4.12.5 Each application for an alternative fire protection feature shall be filed with the District and shall be accompanied by such evidence, letters, statements, results of tests, or other supporting information as required to justify the request. The District shall keep a record of actions on such applications, and a signed copy of the District's decision shall be provided for the applicant.

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1.4.12.6 Approval. The District shall approve such alternative construction systems, materials, or methods of design when it is substantiated that the standards of the Code are at least equaled. If, in the opinion of the District, the standards of the Code shall not be equaled by the alternative requested, approval for permanent work shall be refused. Consideration shall be given to test or prototype installations.

1.4.12.7 Nothing in this Section 1.4.12, shall be interpreted to limit the parties' ability to enter into an agreement on the equivalences, alternatives, and modifications. Should the parties enter into such an agreement, they will file a notice of agreement and dismissal of the appeal with the District and provide a copy to the Board of Appeals' legal counsel.

### 1.4.13 Tests.

1.4.13.1 Whenever evidence of compliance with the requirements of the Code is insufficient or evidence that any material or method of construction does not conform to the requirements of the Code, or to substantiate claims for alternative construction systems, materials, or methods of construction, the District shall be permitted to require tests for proof of compliance to be made by an approved agency at the expense of the owner.

1.4.13.2 Test methods shall be as specified by the Code for the material in question. If appropriate test methods are not specified in the Code, the

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District is authorized to accept an applicable test procedure from another recognized source.

1.4.13.3 The District shall retain copies of the results of all such tests.